

**TESTIMONY OF SAMUEL H. BOOK, Ph.D.  
PRESIDENT, MALARKEY-TAYLOR RESEARCH**

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## 1. Introduction

I am president of the market research division of Malarkey-Taylor Associates, Inc. (MTA), the country's oldest, most experienced consulting firm specializing in cable television, with over 25 years of continuous consulting and research service to the cable industry. During the past five years, I have designed and conducted more than 100 statistically projectable surveys for cable operators, cable programmers, wireless cable companies and major international firms and governments contemplating entry into cable TV. Previously, I spent four years as research director for a Los Angeles market research firm; I designed and conducted hundreds of motion picture surveys for movie studios and independent producers. A copy of my resume is attached to this testimony.

The following companies, among others, have used and relied upon survey data and analysis which I provided while at Malarkey-Taylor: Continental Cablevision, Comcast Cable Communications, Jones Intercable, Time-Warner, American Television & Communications, Tele-Communications, Inc., Hughes Communications, Showtime Networks, Tribune Broadcasting, United Video, and Times-Mirror Corp. These studies included telephone surveys and personal interviews among cable consumers and cable operators.

I have been asked by the Joint Sports Claimants (JSC) to provide my opinions concerning the Bortz & Company constant sum survey of cable operators that has been submitted to the Copyright Royalty Tribunal (CRT) in the 1989 cable royalty distribution proceeding. (Cable Operator Valuation of Distant Signal Non-Network Programming, 1989, dated August 1991). I also have been asked to present my views of the criticisms made of a similar JSC constant sum survey during the 1983 cable royalty distribution proceeding.

## **2. 1989 Bortz Survey**

Based on my market research experience and training, I would accept the 1989 Bortz survey results as valid and reliable, within the margins-of-error and confidence levels stipulated in the survey report. I believe the study provides accurate estimates of the relative amounts that cable operators would have spent in 1989 on the different categories of distant signal non-network programming they carried.

The constant sum method utilized in the Bortz study is appropriate for the purpose of assessing how cable operators would have allocated programming budgets among distant signal non-network programming categories. In fact, I do not believe there would have been any better way of determining how cable operators would have allocated their programming budgets. Constant sum surveys are often used in cable industry market research, and they are relied upon in the cable industry, especially in research situations where respondent trade-offs must be considered.

The Bortz study was competently designed and implemented. It utilized generally accepted methods of sampling, questionnaire design and interviewing. In addition, the survey response rate was outstanding at nearly 80 percent for the key survey question, thereby ensuring a high degree of confidence in the projectability of survey data to cable operators-at-large. Consistency of the 1989 survey data with prior constant sum survey data submitted to the CRT provides further confirmation of the 1989 study's acceptability.

## **3. Survey Criticisms Raised in 1983 Proceedings**

During the 1983 cable royalty distribution proceeding, several parties presented a number of surveys of cable operators and cable subscribers. Professor Alan Rubin, a consultant retained by the Motion Picture Association of America, criticized each of those surveys. The CRT relied upon Professor Rubin's testimony in part as a basis for discounting the weight to be accorded to JSC's 1983 constant sum survey. In my opinion, the various criticisms advanced by Professor Rubin and relied on by the CRT do not provide a valid basis for discounting the 1989 Bortz constant sum study.

a. Recall

I agree with Professor Rubin that the reliability of survey data decreases when there is a long time lag between the survey and the behavior in question. Professor Rubin correctly pointed out that "[w]e cannot expect to gather meaningful information from people about how they would have acted two years ago." (Rubin, p.4) The Tribunal also accepted this criticism. (Fed. Reg. 12795)

However, the 1989 constant sum survey of cable operators was conducted at the end of 1989 and beginning of 1990. Therefore, the two-year lag in the 1983 cable operator survey does not apply to the 1989 survey. In the 1989 Bortz survey, some respondents, surveyed in 1989, were asked how they would allocate their program budgets for 1989. Other respondents, surveyed in early 1990, were asked how they would have allocated their programming budgets in 1989. Whereas consumers cannot be expected to recall their behavior in the recent or distant past, cable operators would be expected to recall what they would have done as part of their professional responsibilities a few months ago. Consequently, recall criticism of the 1989 constant sum survey of cable operators does not have the validity of Professor Rubin's criticism of the 1983 survey.

b. Constant Sum Techniques

Professor Rubin testified that the constant sum technique was "inappropriate" because "[o]perators and subscribers were asked to do something completely abnormal to their routine cable television behaviors. They were asked to break out specific categories of programs and to report how valuable each type of program was to them." (Rubin, p.5) The same issue was raised in the Tribunal's 1983 Final Determination, where it was stated that Rubin found the constant sum survey "to be an activity that neither cable operators nor subscribers do in actuality . . . ." (Fed. Reg. 12795).

It may be abnormal for subscribers and TV viewers to break out categories of programs and report on their relative value, but it is not an abnormal task for cable operators. Although cable operators typically "program whole signals" (Fed. Reg. 12795), they engage in exercises similar to constant sum allocation when evaluating those signals. Cable operators are frequently called upon to assess the value of alternative types of programming--sports, movies, series, documentaries, news, etc.--when deciding to carry a new program service or drop an existing service. The 1989 Bortz survey asked cable operators to do what they often do as part of their jobs, namely to allocate percentages

of a fixed budget to different program categories based on the value of those categories in attracting and retaining subscribers.

The 1989 constant sum survey improved upon the 1983 survey by a small but significant change in the wording of the constant sum question. In 1983 cable operators were asked to allocate the value of program categories, while in 1989 cable operators were asked to allocate their 1989 program budget across program categories. The 1989 research exercise was more realistic than in 1983, since cable operators are used to thinking in terms of budget allocations.

c. The Interview Process

Professor Rubin questioned whether respondents could reliably recall values placed on program categories "in the very few minutes provided by a telephone interview." (Rubin, pp. 5-6) The Tribunal likewise noted Professor Rubin's testimony that "this type of exercise conducted in a few minutes over the telephone could not accomplish the goals of the survey." (Fed. Reg. 12795; see also p. 12809).

I believe such concerns are unwarranted. The survey instrument was appropriately designed to be easily administered and understood on the telephone. The questions were clearly worded and the instrument was concise and narrowly focussed on the key constant sum questions. I believe the questionnaire would have captured and held respondents' attention for sufficient time to complete the constant sum exercise accurately and reliably.

The respondents were cable system executives. In my opinion, they should have had no difficulty understanding and answering the questions posed in the survey. They also should have been familiar with the terminology and definitions used in the surveys.

Malarkey-Taylor and other cable research firms with which I am familiar have conducted numerous telephone surveys of cable operators in recent years, and the results have been relied upon by our clients. These surveys usually require 15 to 20 minutes to complete on the phone. My experience has been that cable operators are typically able to understand the questions and to respond in a thoughtful, meaningful and reliable manner to questions posed in a brief telephone interview.

The survey process used by Bortz, as well as the design of survey instruments, was up to professional standards. An independent, third-party research firm, the highly respected and experienced Burke Marketing Research, administered the surveys, thereby minimizing the possibility of interviewer bias and strengthening confidence in the survey results.

#### **4. Conclusion**

Malarkey-Taylor has conducted many different types of cable industry surveys during the past few years, including studies for seven of the top-ten cable industry MSOs, scores of surveys for smaller cable operators, in-depth market studies for cable programmers and dozens of surveys for firms introducing new technologies. I have also reviewed and analyzed numerous surveys of cable consumers and operators conducted by other research organizations.

I believe that the 1989 Bortz study was well designed and professionally implemented, and I believe it can be relied upon to determine how cable operators would have allocated programming budgets among various program categories. Professor Rubin's criticisms of the 1983 surveys of cable operators are, in my opinion, not valid as a basis for discounting the results of the 1989 Bortz constant sum study. The Bortz 1989 study rectified a few deficiencies in the 1983 study, especially by eliminating the time lag between the surveys and the behavior which cable operators were being asked to recall and by changing the allocation exercise to focus on program budgets rather than program value. These improvements overcame some of Professor Rubin's criticisms, while other criticisms emanating from the 1983 proceedings were simply not justified.

## **SAMUEL H. BOOK, Ph.D.**

Dr. Book is president of the research division of Malarkey-Taylor Associates. He is a professional economist and market researcher, specializing in the design and implementation of consumer studies and economic analyses of telecommunications, cable television, and related technologies. Dr. Book has extensive experience in conducting focus groups, designing and managing statistically valid consumer surveys, writing in-depth reports on business, economic, and consumer aspects of cable television, wireless cable, direct broadcast satellite, home video, and other technologies. He has developed and used analytical models for cost-benefit studies and economic feasibility studies.

From 1970 to 1979 Dr. Book was a university professor in Toronto, where he developed and taught courses in economics and management at the MBA and undergraduate levels. From 1980 to 1984, as research director of The National Research Group, he produced over 300 market research studies for the movie industry using a variety of data collection and sampling methods, including focus groups, telephone surveys, and audience research.

### **Qualifications and accomplishments include:**

- ◆ Ph.D. in Economics, Columbia University, New York, NY.
- ◆ Research Director, National Research Group, Los Angeles, CA.
- ◆ Assistant Professor, Faculty of Administrative Studies, York University, Toronto, Ontario, Canada.
- ◆ Senior Research Consultant, The Ontario Arts Council.

### **Speeches and presentations:**

- ◆ Spoke on "The Economics of Cable System Overbuilds" at The Florida Cable Television convention, The Eastern Cable Show and Florida Public Service Board, and The Western Cable Show.
- ◆ Speech, "Cable Rate Sensitivity" presented at the Great Lakes Cable Convention.
- ◆ Spoke as panelist at PKA Associates Overbuild Seminar.
- ◆ Spoke on techniques of cable viewership research at a CTAM seminar.
- ◆ Presented studies of cable system overbuilds at:
  - City Council meeting in Naples, FL,
  - County Commissioners hearing in Reston, VA.

# Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Samuel Book Written Direct Testimony (JSC Written Direct Statement Vol. II) to the following:

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at [brianb@ix.netcom.com](mailto:brianb@ix.netcom.com)

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at [glewis@npr.org](mailto:glewis@npr.org)

Canadian Claimants Group, represented by Victor J Cosentino served via Electronic Service at [victor.cosentino@larsongaston.com](mailto:victor.cosentino@larsongaston.com)

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at [smosenkis@ascap.com](mailto:smosenkis@ascap.com)

National Association of Broadcasters (NAB), represented by David J Ervin served via Electronic Service at [dervin@crowell.com](mailto:dervin@crowell.com)

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at [cbadavas@sesac.com](mailto:cbadavas@sesac.com)

Devotional Claimants, represented by Jessica T Nyman served via Electronic Service at [jessica.nyman@pillsburylaw.com](mailto:jessica.nyman@pillsburylaw.com)

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MPAA-represented Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at [goo@msk.com](mailto:goo@msk.com)

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at [brianb@ix.netcom.com](mailto:brianb@ix.netcom.com)



Signed: /s/ Michael E Kientzle